S.B.CIVIL WRIT PETITION NO.7351/2007
(Ratna Ram Bishnoi Vs. State of Rajasthan & ors.)

Date of order : 27th November 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Imran Khan, for the petitioner.

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BY THE COURT:

Heard learned counsel and perused the material placed on record.

Application for addition of State of Rajasthan as party respondent (IA No. 7228/2007) is allowed and amended cause title already filed is taken on record.

By way of this writ petition, the petitioner, working on the post of teacher seeks to question the order dated 07.09.2007 (Annex.1) whereby he has been transferred from Government Primary School Ramji ki Dhani, Karwada, Panchayat Samiti Raniwara to Government Primary School, Bhatiyon ki Dhani, Barwa, Panchayat Samiti Ahore, and the order dated 03.10.2007 (Annex.2) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing his appeal (No.1891/2007) against the said transfer order.

Seeking to assail the orders aforesaid the petitioner contends that he has been transferred without any

administrative exigency and without application of mind inasmuch with the transfer of the petitioner and not posting of anyone else vice him, the School at Ramji ki Dhani, Karwada is left with no teacher; and that the State Government is not competent to pass such transfer order which could be made only with the concurrence of Panchayat Samiti concerned by the District Establishment Committee; and that the Tribunal has erred in summarily rejecting the appeal without considering the substance of the submissions made on behalf of the petitioner.

The present petition remains bereft of substance and contentions sought to be urged herein deserve to be rejected following detailed order made by this court in a batch of similar petitions led by CWP No. 7341/2007 (Ram Lal Bishnoi Vs. State of Rajasthan & Ors): decided on 19th November 2007.

In the aforesaid order dated 19th November 2007 while rejecting similar contentions this court has pointed out,-

> "The submission as made by the learned counsel that the posts remain vacant and there is no administrative exigency wherefor the petitioners were required to be transferred has only been noted to be rejected. It remains a matter for authorities concerned to decide as to which particular post is to be manned by whom; and as to how the manpower is to be deployed. Ultimately, as to who should be transferred where is the matter for the appropriate authority to decide as pointed out by the Hon'ble Supreme Court in the case of S.L.Abbas Vs. Union of India: AIR 1993 SC 2444. Each of the petitioners holds a transferable post, and has no such right to question his transfer order merely because

nobody is posted vice him or if any post remains vacant."

This court has further observed and held on the operation of the relevant provisions of the Rajasthan Panchayati Raj Act 1994 and Rajasthan Panchayati Raj Rules 1996 that,-

"Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.

A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District.

As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly of opinion that the transfer

> orders of the present nature as issued by the State Government, transferring the employees from one Panchayat Samiti to another Panchayat Samiti, do not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement."

Following the decision aforesaid dated 19th November 2007 this writ petition stands rejected.

(DINESH MAHESHWARI),J.

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